IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH

MONDAY, THE 2ND APRIL 2007 / 12TH CHAITHRA 1929

WP(C).No. 3808 of 2005(C)

PETITIONER:

M.K. MINI, LABORATORY TECHNICIAN
PRIMARY HEALTH CENTRE, KULATHUPUZHA,
KOLLAM DISTRICT.

BY ADV. SRI.ALEX VARGHESE

RESPONDENTS:
---

1. STATE OF KERALA, REPRESENTED BY
THE SECRETARY TO GOVERNMENT, HEALTH DEPARTMENT
SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DIRECTOR OF HEALTH SERVICES,
THIRUVANANTHAPURAM.

3. THE DISTRICT MEDICAL OFFICER,
KOLLAM.

BY GOVERNMENT PLEADER SRI.K.V.MANOJKUMAR.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.C.NO.3808/2005

A P P E N D I X

PETITIONER'S EXHIBITS :

EXT.P1 : TRUE COPY OF PROPOSAL DT. 16.11.1999 TOGETHER WITH ORDER DATED 6.1.2000 OF THE THIRD RESPONDENT.

EXT.P2 : TRUE COPY OF GO(P) NO.705/81/(372)/FIN DATED 28.10.1981 ISSUED BY THE FIRST RESPONDENT.

EXT.P3 : TRUE COPY OF GO(MS) 775/80/(245)/FIN DATED 21.10.1980 ISSUED BY THE FIRST RESPONDENT.

EXT.P4 : TRUE COPY OF GO(P) 944/86/(117)/FIN DATED 24.12.1986 ISSUED BY THE FIRST RESPONDENT.

EXT.P5 : TRUE COPY OF CIRCULAR NO.3/95/(35)/FIN DATED 1.3.1995 ISSUED BY THE FIRST RESPONDENT.

EXT.P6 TRUE COPY OF REPRESENTATION DT. 31.12.2004 SENT TO THE RESPONDENTS 1 AND 2.

TGS

KURIAN JOSEPH, J.

W.P.(C) No.3808 of 2005

Dated 2nd April, 2007.

J U D G M E N T

Petitioner is aggrieved since her provisional service prior to 1.10.1994 in the cadre of Blood Bank Technician Grade II is not treated as qualifying service and tagged on to the subsequent service as Laboratory Technician Grade II on a regular basis. It is stated in the counter affidavit that the pay scale is identical and only duties are different. It is now settled law that an employee having provisional service prior to 1.10.1994 is entitled to have the same treated as qualifying service for the purpose of higher grade. (See the decision in **Sobhana v. State of Kerala** (2004(3) KLT 131**)**. For the only reason that there is change of duty, since there is identity in the scale of pay, the benefit of the provisional service rendered prior to 1.10.1994 cannot be denied. That is the spirit of the Bench decision of this Court in **Hussain v. Kerala Water Authority** (1996(2) KLT 555). In the said decision what was considered was the difference in the scale of pay owing to pay revision. In the instant case, scale of pay is the same, but nature of the duties is said to be different. That is only because one appointment is as Blood Bank Technician Grade II whereas the other appointment is as Laboratory Technician Grade II. The method of appointment and the qualification for both the posts are the same. Therefore, there is no point in denying the benefit on that

count. Accordingly, the writ petition is disposed of directing the respondents to grant the benefit of service rendered by the petitioner prior to 1.10.1994 in the cadre of Blood Bank Technician Grade II for the purpose of higher grades. This shall be done within two months from the date of production of a copy of the judgment.

KURIAN JOSEPH, JUDGE.

tgs

KURIAN JOSEPH, J

O.P.No. of 2002

J U D G M E N T

Dated 2nd April, 2007.